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BOOK REVIEWS.

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THE FEDERAL POWER OVER COMMERCE. BY WILLIAM DRAPER LEWIS, LL.D., OF THE PHILADELPHIA BAR. University of Pennsylvania Press, Philadelphia, 1892.

The writer of this monograph takes the ground that the extent of the constitutional power of Congress to regulate commerce among the several States can only be determined by an examination of the decisions of the Supreme Court of the United States interpreting the commerce clause of the Constitution; and the book itself is an excellent though compendious review of those decisions, particularly so far as they define the word "commerce," the nature of the Federal power over it, the effect of the commerce clause upon the general legislative power of the States, their right of taxation, and their police power. Each branch of the general subject is considered historically, and the whole is followed by a most convenient index of decisions, in which the cases are classified according to their different subjects.

The commerce clause of the Constitution has perhaps given rise to more litigation than any other, except that defining the judicial power of the Federal Government, and that inhibiting States from passing laws impairing the obligation of contracts. While the general limits of this power may be regarded as conclusively settled, there is still much uncertainty with respect to the authority of the States over commerce not wholly internal, particularly in respect to their police power, and their power to tax the subjects of interstate commerce. Even since this book was published, and during the term which has just closed, several important cases have been decided, which are claimed by some to qualify to a certain extent the principles laid down in prior cases. Thus in *Maine v. Grand Trunk Railway Co.*, 142 U. S., 217, it was held, though by a bare majority of the Court, that a State statute requiring every railroad within the State to pay an annual tax for its franchise, to be determined by the amount of its gross transportation receipts; and further providing that, when ap-

plied to a railroad lying partly within and partly without the State, the tax shall be equal to the proportion of the gross receipts in the State, did not conflict with the Constitution of the United States. In this case Mr. Justice BRADLEY made his last public utterance from the bench in a strong dissent, concurred in by three other Justices, taking the position that the laying of a tax upon the gross receipts of a company, including receipts for interstate and international transportation, was substantially a taxation of the revenues derived from interstate commerce, which had been held in many previous decisions to be unconstitutional; citing *Philadelphia Steamship Co. v. Pennsylvania*, 112 U. S., 326, and several other cases. The majority of the Court, however, was of the opinion that this was an excise tax upon the corporation for the privilege of exercising its franchises within the State, and that the rule of apportioning the charge to the receipts was reasonable, and likely to produce the most satisfactory results both to the State and the corporation taxed. A distinction was drawn, which to the minority of the Court seemed to be unsound, between a levy upon the receipts themselves, and a reference to them simply as a means of ascertaining the value of the privilege conferred.

In the *Horn Silver Mining Co. v. New York*, 143 U. S., 305, it was held, Mr. Justice HARLAN alone dissenting, that a statute of New York imposing a tax upon the corporate franchise or business of every corporation organized under a law of any other State, to be computed by a percentage upon its whole capital stock, was not an unconstitutional interference with interstate commerce, when applied to a manufacturing corporation organized under the laws of Utah, and doing a greater part of its business out of the State of New York, but doing a small part of its business within such State.

The principle involved in the case of *Munn v. Illinois*, 94 U. S., 113, which has given rise to so much controversy, was carefully reconsidered and adhered to in the case of *Budd v. New York*, 143 U. S., 517, although in this case, as in the *Munn* case, there was a dissent by three of the Justices.

In *Ficklen v. The Taxing District*, unreported, a statute of Tennessee, imposing upon brokers a tax measured by the amount of capital invested or used in their business, was held to be proper, although the business done by the broker in question was in the purchase of cotton for customers residing outside of the State. The gist of the decision was, that as the State has the right to tax occupations, where a resident citizen engaged in such business, the fact that the business done chanced to consist wholly or partly in negotiating sales between resident and non-resident merchants, did not necessarily make the tax one upon interstate commerce. The case was distinguished from *Robbins v. Shelby County Taxing District*, 120 U. S., 489, in the fact that the tax in that case was imposed upon drummers and all persons not having a regular licensed house of business in the district, and it was held as against non-resident drummers to be an unlawful interference with interstate commerce.

In the *Lehigh Valley R. R. Co. v. Pennsylvania*, a tax upon receipts for transportation between places in Pennsylvania, over lines partly in Pennsylvania and partly in another State, that is to say, passing out of Pennsylvania into other States, and back again into Pennsylvania in course of transportation, was lawful. In this case the Lehigh Valley Company operated a line from Mauch Chunk to Philadelphia, by the way of a line entering New Jersey at Phillipsburg, and running thence by way of Trenton to Philadelphia. This was held to be internal commerce only, and the fact that a part of a continuous transportation was performed outside of the State did not affect the character of the traffic.

Finally, in the *Interstate Commerce Commission v. B. & O. R. R. Co.*, the Supreme Court entered, for the first time, upon the consideration of the Interstate Commerce law, a statute which is likely to be fruitful of litigation, and held that the practice of issuing a single ticket for the transportation of ten or more persons at a reduced rate from the ordinary passenger fare was not an "unjust discrimination" or "an undue or unreasonable preference,"

within the meaning of Sections 2 and 3 of the Interstate Commerce law, and was, therefore, legal. This practice originated with the issuing of tickets to the managers of theatrical and operatic companies for the transportation of their entire troupes, and has become general throughout the country. The decision was strictly within the line of the construction given to the English traffic acts by the courts of the United Kingdom, and the Court carefully excluded the question of discrimination as applied to the transportation of freight. Curiously enough, this decision is seized upon by a portion of the newspaper press as indicating the hostility of the Court to the Interstate Commerce law, when nothing could be further from this than the language of the opinion.

The difficulties surrounding the interpretation of the commerce clause of the Constitution are apparent, not only from the number of decided cases, and the multiplicity of questions dependent upon this clause, but from the fact, that the members of the Court itself have never been, and in the nature of things probably never will be, entirely harmonious in their views. Rarely has an important case, involving the construction of this clause, been decided without a dissent from one or more members of the Court, and the most that can be hoped for is the determination of each question as it arises, and the gradual settlement of principles as they can be extracted from these cases.

The book of Mr. LEWIS contains an accurate statement of these principles so far as they can be considered settled by the adjudications of this tribunal.—H. B. BROWN.

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CORPORATIONS IN PENNSYLVANIA. By WALTER MURPHY, author of "PARTNERSHIPS, ETC., IN PENNSYLVANIA." Two volumes. Philadelphia, 1891. Rees Welsh and Company.

In these two volumes Mr. MURPHY presents to the profession a digest of Pennsylvania decisions on the law of corporations, as well by County Courts as by the Supreme Court of the State. The work includes an elaborate index, which is in itself a digest, for it includes under the appro-